



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 24, 1995

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Legal Affairs Division  
Texas Department of Criminal Justice  
P.O. Box 99  
Huntsville, Texas 77342-0099

OR95-681

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32628.

The Texas Department of Criminal Justice (the "department") received a request for the personnel file of the requestor. You object to producing certain portions of that information that identify an inmate under sections 552.101 and 552.108 of the act in conjunction with the informer's privilege. We have considered the exceptions you claimed and have reviewed the documents at issue.<sup>1</sup>

The Texas courts have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 (1988) at 3, 208 (1978) at 1-2. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those

---

<sup>1</sup>We note that in your original request, you claimed that section 552.107 protected the submitted documents from disclosure. However, in your subsequent correspondence, the department did not demonstrate how that particular exception applied to any of the submitted documents. The governmental body has the burden of establishing how and why an exception applies to information the body wishes to withhold. Open Records Decision Nos. 542 (1990), 532 (1989). As no showing has been made, we conclude that the department has not met its burden as to section 552.107.

who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 (1981) at 2 (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). However, the report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 (1990) at 2, 515 (1988) at 4-5. The documents submitted do not allege any violation of a criminal or civil statute, but merely of a departmental policy. Therefore, we conclude that section 552.101 does not apply to these documents.

You also contend that section 552.108 of the Government Code excepts the submitted information from required public disclosure. Section 552.108(b) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution ...." This section excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 531 (1989) at 2 (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). When section 552.108(b) is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) at 3. You argue that inmate informants will be subject to harassment and retaliation by prison staff and by other inmates. However, the information in the documents does not indicate that the inmate involved actually "informed" on anyone. Moreover, as the identity of the inmate involved is known to the requestor, we do not understand the law enforcement interest in the information. Therefore, the department may not withhold the information that identifies the inmate under section 552.108.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Government Section

SES/KHG/rho

Ref.: ID# 32628

Enclosures: Submitted documents

cc: Ms. Amie Cummings  
3029 S. Bell, Apt. #139  
Amarillo, Texas 79109  
(w/o enclosures)